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Excise Tax Changes Under SAFETEA and the Energy Act; Dye Injection

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Section 6. DIESEL FUEL AND KEROSENE; DYE INJECTION

(a) *Background.* As amended by AJCA, § 4082(a) generally provides that the exemption for dyed diesel fuel and dyed kerosene will not apply unless, among other conditions, the fuel is indelibly dyed “by mechanical injection” in accordance with regulations that the Secretary shall prescribe. This requirement for mechanical injection is effective on the 180th day after the date on which these regulations are issued. Temporary regulations implementing this requirement were issued on April 26, 2005 (T.D. 9199, 2005-19 I.R.B. 1003 [70 FR 21332]). Thus, the effective date of the temporary regulations is October 24, 2005.

(b) *Transition rules.* Treasury and the Service are concerned that many taxpayers, particularly those in areas affected by Hurricanes Katrina and Rita, may not be able to comply with the specific requirements of the temporary regulations by October 24. In addition, some of these requirements may be modified in final regulations. Accordingly, the following transition rules will apply between October 24, 2005, and the date that is 180 days after the date of publication of final regulations in the Federal Register:

(1)(i) Any means of dyeing by mechanical injection will be deemed to meet the “mechanical injection” requirements of § 4082(a) if the dyeing system includes measures to resist tampering that are consistent with customary business security practices. Thus, mechanical injection systems at a terminal are not required to meet the specific requirements of § 48.4082-1T(d) and no penalty will be imposed under § 6715A(a)(2) for a failure to meet those specific requirements.

(ii) In the case of a malfunction of a system described in section (b)(1)(i) of this section, fuel dyed by manual dyeing will be deemed to meet the requirements of § 4082(a) if the interval between the first occurrence of manual dyeing and the last does not exceed 72 hours (excluding any Saturday, Sunday, or legal holiday that is within the interval) and the facility operator keeps adequate records describing the circumstances surrounding the malfunction. The Service may withdraw an operator’s right to dye by manual dyeing if the Service cannot verify the accuracy of such dyeing.

2) A mixture containing diesel fuel or kerosene will be treated as being dyed by mechanical injection if—

(i) The mixture consists of at least 80 percent diesel fuel or kerosene and the remaining portion is a liquid, such as biodiesel, (“other liquid”) that is not diesel fuel or kerosene;

(ii) The diesel fuel or kerosene in the mixture was dyed by mechanical injection;

**(iii) The diesel fuel or kerosene and the other liquid are combined at a facility that is not a terminal;
and**

(iv) The mixture meets the specifications of § 48.4082-1(b) (relating to dye type and concentration) when it is removed from the facility where the diesel fuel or kerosene and the other liquid are combined.